

IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR SUSSEX COUNTY
COURT NO. 17

GEORGETOWN PRESERVATION ASSOCIATES LLC	§	
Plaintiff Below,	§	
Type Appellee	§	
	§	
VS	§	C.A. No. JP17-17-001655
	§	
	§	
JONNICE COULTER	§	
Defendant Below,	§	
Type Appellant	§	

TRIAL DE NOVO

Submitted: July 31, 2017
Decided: August 24, 2017

APPEARANCES:

Plaintiff represented by David C. Zerbato, Esq.
Defendant represented by Jayce R. Lesniewski, Esq.

Alan Davis, Chief Magistrate
Sheila Blakely, Justice of the Peace
Richard Comly, Justice of the Peace

**IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR SUSSEX COUNTY
COURT NO. 17**

CIVIL ACTION NO: JP17-17-001655

GEORGETOWN PRESERVATION ASSOC VS JONNICE COULTER

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

Amended Interim Order

This case began as a rent claim landlord tenant action, filed by the plaintiff on March 13, 2017. Plaintiff eventually filed an amended complaint for a rules violation claim to be added. After a number of continuances, the case was heard before a single judge on June 30, 2017. The Court found in favor of the Plaintiff and Defendant filed a timely appeal. A three-judge panel consisting of Chief Magistrate Davis, Deputy Chief Magistrate Blakely and Judge Comly heard the appeal on July 31, 2016. This is the Court's interim order after trial. This order has the potential to dispose of the case, but is interim in that it leaves the claim for a rules violation undecided. For the reasons stated below, the Court finds, by a preponderance of the evidence, that Defendant failed to pay rent as required, entitling Plaintiff to possession. However, the Court also finds a good faith dispute exists in this case and the execution on that judgment shall be stayed for a period of 10 days, within which Defendant must pay all rent due and sign the required paperwork for re-certification of her rental amount.

Defendant, Jonnice Coulter, is a resident of a federally subsidized housing unit in Georgetown Apartments, which is owned by Plaintiff, Georgetown Preservation Associates, LLC. She moved into the apartment in October, 2016, after a short delay attributable to the landlord. Defendant's rent was \$562.00. Defendant had not previously lived in a subsidized housing and was unfamiliar with the procedures necessary to compute rental amounts and her responsibilities in that process. She was initially concerned about the amount of her rent and met with an occupancy specialist after the original determination of her rental amount. As a result of that review, Defendant's rent was due to be reduced, with approval of that reduction coming in December. In order to put that new rental amount into effect, Defendant was required to sign papers reflecting that change in circumstances. Despite several attempts to have her sign, Defendant failed to do so. In testimony, she cited her confusion about what rent was actually due, and, at some point, discontinued paying the rent. As a result of her refusal to sign the paperwork, landlord eventually moved to terminate her rental subsidy and began charging market rent prices.

Adding to the confusion of this situation were two items. First, tenant had not taken possession of the property until later than the stated beginning of the rental term; all parties agreed that that delay was attributable to the landlord and the property was uninhabitable during that delay period. Originally, landlord attempted to have the rental period modified to account for this, but, in January 2017, HUD disapproved the modification to the beginning of the rental period. As such, the landlord was obligated to charge tenant \$399 for the first part of the rental term where she did not have possession. That charge was applied in January of 2017.

Second, as part of a normal market review process, HUD reduced the gross rental amount of Defendant's apartment type by \$10 in January 2017, but, because of delayed approval, this change was retroactive to June 2016, further reducing Defendant's rent.

The Court has considered all of the testimony and the documents provided and finds that Plaintiff has proven that Defendant is in arrears on her rent. However, the defendant's position creates in the mind of the Court a sufficient good faith dispute to invoke the provisions of 25 Del. C. §5716. That section provides that,

2 | Page

VIEW YOUR CASE ONLINE: <http://courtconnect.courts.delaware.gov>

where the Court finds a good faith dispute, any execution on the judgment entered in favor of the Plaintiff shall be stayed "by paying all rent due at the date of the judgment and the costs of the proceeding". Payment must be made within ten days and the Court can require all such assurances as necessary to effectuate the decision.

In this case it is clear that part of that good faith dispute is tied up in the refusal of the Defendant to sign the paperwork necessary to implement her reduced rental rate. As such, the Court is requiring, as part of the stay of judgment, that Ms. Coulter also sign the required paperwork within the same ten-day period. If Defendant fails to pay the judgment amount in full within ten days of the date of this opinion, the court will allow execution on the judgment for possession. If she pays the amount but fails to sign the paperwork, the Court will consider the merits of the second cause of action – whether she has violated the lease terms and is subject to eviction based on that alleged conduct.

Judgment is entered against the Defendant and for the Plaintiff in the amount of \$3439.00 plus court costs. The Court computes that judgment from the balance due as of February 2017 as stated on the ledger sheet provided by the Plaintiff, plus the reduced rental amount of \$490 per month for the months of March, April, May, June, July and August. The Court also awards possession to the Plaintiff subject to a ten-day stay for satisfying the judgment under the good faith dispute. Plaintiff is required to inform the Court in a timely fashion whether such payment has been made. Defendant shall also sign all required paperwork for her rent reduction, as an assurance to the Court under 25 Del C. §5716. Failure to do so within the same ten-day period shall be reported to the Court and further proceedings shall follow as necessary.

IT IS SO ORDERED 01st day of September, 2017



/s/Alan Davis

Justice of the Peace

(SEAL)

Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).

